

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TEMPUR SEALY INTERNATIONAL, INC.

And

MATTRESS FIRM GROUP INC.,

Defendants.

Case No. 4:24-cv-02508

**INTERESTED PARTY SLEEP NUMBER CORPORATION'S
MOTION IN FURTHER SUPPORT OF MAINTAINING UNDER SEAL
PORTIONS OF THE COMPLAINT**

Pursuant to the Court's Order Granting Motion to File Portions of the Complaint Temporarily Under Seal (Dkt. 41), Interested Party Sleep Number Corporation ("Sleep Number"), by and through its undersigned counsel, files this motion in further support of maintaining under seal portions of the Complaint filed on July 2, 2024 (Dkt. 3) ("Sealed Complaint").

Although the public has a presumptive right of access to judicial records such as complaints, district courts have discretion to place information under seal in light of the relevant facts and circumstances of the particular case. *Vantage Health Plan, Inc. v. Willis-Knighton Med. Ctr.*, 913 F.3d 443, 450 (5th Cir. 2019); *see also Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599 (1978). To assess requests for under-seal treatment, courts in this circuit undertake a line-by-line balancing of the public's common law right of access against the interests favoring nondisclosure and protection of parties'—or interested parties'—confidential information. *See Le v. Exeter Fin. Corp.*, 990 F.3d 410, 419 (5th Cir. 2021).

Before bringing this action, the Federal Trade Commission (“FTC”) conducted a pre-Complaint investigation during which it received information from Sleep Number that it has designated as confidential under federal statutes and FTC rules. *See* 15 U.S.C. § 57b-2; 16 C.F.R. § 4.10; *see also* Dkt. 2. Certain such confidential information is included in the Complaint in this action and has been redacted in the publicly-filed version of the Complaint. As far as Sleep Number can tell, the FTC has redacted information related to Sleep Number’s market share and aggregated revenue percentages throughout the United States premium mattress market, which is confidential and proprietary information that Sleep Number does not publicly disclose. Indeed, this information is competitively meaningful and not the type of information Sleep Number would share with customers or other stakeholders, and certainly not with its direct competitors. To the extent other redactions apply to Sleep Number, it is believed that such information is also confidential and proprietary to Sleep Number. Notably, applicable regulations allow Sleep Number, as an interested party, “an opportunity to seek an appropriate protective . . . order” prior to disclosing such information publicly. 16 C.F.R. § 4.10(g).

Thus, Sleep Number seeks to maintain under seal the portions of the Sealed Complaint that contain its confidential information—namely, paragraphs 41 and 45. Sleep Number further requests that, to the extent additional information in the Sealed Complaint (or future amended or supplemental pleadings) contains Sleep Number’s confidential and proprietary information, it also remain sealed. Sleep Number’s request is narrowly tailored to protect the public’s interest in access to public records while preserving its confidential and proprietary information contained within the Sealed Complaint. *See, e.g., McGowan & Co. v. Bogan*, No. CIV.A. H-12-1716, 2015 WL 3422366, at *1 (S.D. Tex. May 27, 2015) (maintaining status of documents filed under seal which contained “confidential financial information”).

For the foregoing reasons, Sleep Number respectfully requests that the Court grant this Motion. Prior to filing, Sleep Number notified the FTC that it objected to the unsealing of its confidential information. Accordingly, Sleep Number seeks this relief pursuant to the Court's order requesting the parties or interested parties submit motions to request the continued sealing of confidential and proprietary information. A proposed order on the Motion will be submitted herewith.

Respectfully submitted,

Dated: July 25, 2024

By: /s/ Andy Nikolopoulos
Andy Nikolopoulos
State Bar No. 24028168
anikolopoulos@foxrothschild.com
FOX ROTHSCILD
Saint Ann Court
2501 N. Hardwood Street, Suite 1800
Dallas, TX 75201
972-991-0899

John Scribner (*pro hac vice* to be filed)
john.scribner@weil.com
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW, Suite 600
Washington, DC 20036
202.682.7096

***ATTORNEYS FOR INTERESTED PARTY
SLEEP NUMBER CORPORATION***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2024, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Andy Nikolopoulos
Andy Nikolopoulos